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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,503	07/22/2003	Randall J. Hubner	ACM 349	8089
23581	7590	11/29/2007	EXAMINER	
KOLISCH HARTWELL, P.C. 520 SW YAMHILL STREET, Suite 200 PORTLAND, OR 97204			ARAJ, MICHAEL J	
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
11/29/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/625,503	HUEBNER ET AL.
	Examiner	Art Unit
	Michael J. Araj	3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 April 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 41,43-64 and 96-100 is/are pending in the application.
 - 4a) Of the above claim(s) 47 and 54 is/are withdrawn from consideration.
- 5) Claim(s) 96,99 and 100 is/are allowed.
- 6) Claim(s) 41,43,44,46-53,55,56,59,60,62-64,97 and 98 is/are rejected.
- 7) Claim(s) 45 and 58 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41, 43, 44, 46-53, 55, 56, 59, 60, 62-64 and 97-98 rejected under 35 U.S.C. 103(a) as being unpatentable over Judet (U.S. Patent No. 5,314,485).

Judet discloses a method of fusing at least two bones comprising selecting a bone plate (4) including a body portion with a bone-facing surface (41) and further including a post (42) extending from the bone-facing surface of the body portion; placing the bone plate into a first and second cavity formed by at least two bones such that the post restricts movement of the body portion in one step; and attaching the bone plate to the at least two bones using fasteners (44 and 45). The post (124), which is separate from the plate, is implanted in between the two bones causing the part of the two bone surfaces adjacent to the post to cause recesses in both bones upon entry and is at least partially in a pre-existing gap between the at least two bones. The bone plate selected includes a bone-facing surface that is slightly convex, and wherein the step of removing includes forming a cavity at least partially defined by a concave bone surface to match the shape of the bone plate. The post is substantially centered on the body portion. The bone plate includes a body portion with a bone-facing surface corresponding to a portion of a sphere that is less than half of a sphere. This interpretation is derived from

the fact that the plate is slightly convex. This slight convexity can be a slice off the top portion of a sphere so that the bone-facing surface corresponds to a sphere that is less than half of a sphere. Also disclosed is a bone plate defining a central axis and a plurality of openings arranged around the central axis, wherein each of the plurality of openings defines an axis extending obliquely to the central axis, and wherein the step of attaching includes a step of placing bone screws through at least two of the plurality of openings. Element 3 can be considered a cap that could be configured to obstruct out-of-bone movement of at least one fastener. The fasteners used can be pins or screws (Col 3, lines 32-34). Screws being used would give rise to openings in the plate where the fasteners 44 and 45 are placed. The perimeter and bone-opposing surface that opposes the bone-facing surface has a thickness greater than the average thickness of the body portion measured between the bone-facing and bone-opposing surfaces. The body portion has a width and a height, where the height is substantially less than half the width when the strands are cut to a smaller size.

Judet discloses the claimed method except for forming the cavity including the step of reaming. Judet is silent to the preparation of the bones. It would have been obvious to one skilled in the art at the time the invention was made to have used a reamer to prepare the site because it is well known in the art to prepare surfaces of implants using a reamer to form the surface and obtain a better fit of the implant. (such as in Wilson et al., U.S. Patent No. 5,919,195) Judet does not disclose wherein the first and second portions of the cavity being formed in a single step. It is understood that the surface of the bone is prepared and can be done so in a single step.

With respect to claims 49, 51 and 64, Judet discloses the claimed invention except for the post having a threaded engagement with the body portion, a bone-facing surface having a rough texture, the body portion having at least one slot configured such that a bone screw can be placed at multiple positions along the slot and the post extending from the bone-facing surface by a distance less than the height. It would have been obvious to one skilled in the art at the time the invention was made to have these features placed into Judet's apparatus because it is only a matter of design for these features. The threaded post will make device easier to use, the rough facing texture will prevent slippage of the plate prior to installing the fasteners, the slots will allow user manipulation for a better installation of the implant and the post having a height less than the height of the plate itself is only a matter of design choice.

Allowable Subject Matter

Claims 96, 99 and 100 are allowed.

Claims 45 and 58 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments with respect to claim 41-64 have been considered but are moot in view of the new ground(s) of rejection.

With reference to the new claims 97-98. The plate of Judet is ovular which is a special circle. Also because of the broad use of the claim limitation in claim 97, Judet's

plate can be interpreted as having a circular perimeter. With respect to claim 98, even though the plate appears to be three linear plates that are integral, the plate is given a rounded appearance which is why it can be interpreted as being a portion of a sphere. Again the use of broad claim language allows for this interpretation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

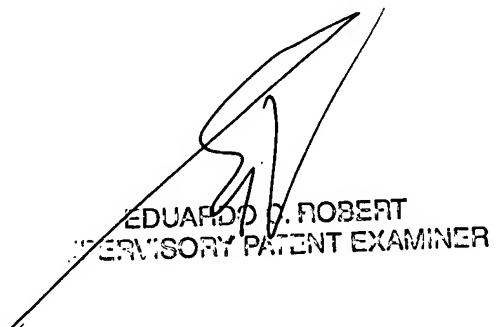
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MJA


EDUARDO D. ROBERT
INTERVIEWS/PATENT EXAMINER